IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ram Niwas. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 2642/2007

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Date of Order: May 10, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. K.R. Choudhary, for the petitioner.
Mr. Rameshwar Dave, Deputy Govt. Advocate, for respondents.

BY THE COURT:

Notice for final disposal is accepted by the learned Deputy Government Advocate appearing for the respondents. With the consent of learned counsel for the parties, the writ petition is finally heard and decided at the admission stage.

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to provide him compassionate appointment under the Rajasthan Recruitment of Dependents of Government Servants Dying While in Service Rules, 1975 (for short, "the Rules, 1975" hereinafter).

The facts and circumstances giving rise to the instant writ petition are that petitioner's father Bachna Ram was

appointed as Chungi Nakedar by the respondent on 1-10-1976. He died while in service on 27-7-1985 and the death certificate Annx.1 has been placed on record. At the time of death of his father, the petitioner was a minor of 23 days as his date of birth is 4-7-1985. On attaining majority, the petitioner moved the respondents on 8-9-2003 vide Annx. 3 claiming compassionate appointment. The respondents declined to provide compassionate appointment to the petitioner, hence this writ petition.

I have heard learned counsel for the parties at length.

The Rules of 1975 came to be repealed by the Rajasthan Recruitment to the Dependents of Deceased Government Employees Rules, 1996 (for short, "the Rules of 1996" hereinafter) and after coming into force the Rules of 1996, the compassionate appointments under the repealed Rules of 1975 cannot be provided.

The controversy involved in the instant writ petition stands concluded by a Division Bench decision of this Court in the Board of Rajasthan & Anr. Vs. Rajendra & 3 ors., 2001(2) WLC 51, wherein this Court held as under:-

> "In our opinion, the dependents of the deceased Government servants do not stand to acquire any right of employment nor does any such accrued to them by mere death of such Government servant and, therefore, they cannot be allowed to invoke

Section 6 (1) (C) of the Rajasthan General Clauses Act which provides that where any Rajasthan law repeals any enactment thereto made, then unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred any enactment so repealed because in the present case not only a different intention appears in the scheme of Rule 5, 10 (3) and 10 (6) of the Rules of 1996 when they are compared with Rules of 1975, but also not right of any description was acquired, accrued or incurred by the dependents under the repealed rules. Law is well settled that whenever an Act is repealed, it must be considered, except as to transactions passed and closed as if it had never existed. The effect of repeal vide rule 15 in the present case was to obliterate the Rules of 1975 completely from the book and as if it has never been framed and it never existed to the extent of actions which were initiated, taken and concluded while the Rules of 1975 were existing. Moreover, existence of corresponding provisions similar to the one contained in repealed provisions is condition precedent to claim that a different intention does not appear in the new rules and, therefore, the rights of the dependents would not stand effected under the new rules. If certain provisions of the new rules are inconsistent and incompatible with the old rules, such rights automatically get obliterated and as a result and effect of the provisions relating to repeal, earlier provisions no longer survive. As to the meaning of right accrued and acquired and as to what effect would be there on the rights where a contrary intention appears in the new set of Rules. Strong reliance was placed on the recent judgment of the Supreme Court in the case reported in Gajraj Singh & ors. Vs. State Transport Appellate Tribunal, (1997) 1 SCC 650 for the above proposition. In para 22, the Supreme Court has observed as follows "whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law."

In this view of the matter, I do not find any force in the writ petition and it is dismissed accordingly. There shall be no order as to costs.

(H.R. PANWAR), J.

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